

EXHIBIT 65

Page 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, et al., :
:
Plaintiff, :
:
vs. : Case No.:
:
GOOGLE, LLC, :
:
Defendant. :

VIDEOTAPED DEPOSITION OF ALLEN OWENS, JR.

DATE: September 28, 2023
TIME: 9:36 a.m.
LOCATION: Paul, Weiss, Rifkind,
Wharton & Garrison LLP
2001 K Street, Northwest
Washington, D.C. 20006-1047

REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

Job No. CS6118347

	Page 2	Page 4
1	A P P E A R A N C E S	
2	On behalf of Plaintiff:	
3	CHASE PRITCHETT, ESQUIRE	1 DEFENDANT'S DEPOSITION EXHIBITS: *
4	KATHERINE CLEMONS, ESQUIRE	2 164 Plaintiff's Responses to Defendant
5	ALVIN CHU, ESQUIRE	3 Google LLC's Fifth Set of
6	U.S. Department of Justice	4 Interrogatories to the United States 101
7	450 5th Street, Northwest	5
8	Washington, D.C. 20530	6 PREVIOUSLY MARKED/REFERRED TO:
9	On behalf of Defendant:	7 55 Bates NAVY-ADS-241136 to 143
10	MARTHA L. GOODMAN, ESQUIRE	8 60 Bates NAVY-ADS-28530 to 531
11	LEAH HIBBLER, ESQUIRE	9
12	Paul, Weiss, Rifkind,	10
13	Wharton & Garrison, LLP	11
14	2001 K Street, Northwest	12
15	Washington, D.C. 20006-1047	13
16	(202) 223- 7341	14
17	mgoodman@paulweiss.com	15
18	ALSO PRESENT:	16
19	Orson Braithwaite, Video Technician	17
20		18
21		19
22		20
		21
		22 (* Exhibits attached to transcript.)
	Page 3	Page 5
1	C O N T E N T S	
2	EXAMINATION BY: PAGE	
3	Counsel for Defendant 6	1
4	Counsel for Plaintiff 105	2 P R O C E E D I N G S
5		3 VIDEO TECHNICIAN: Good morning. We are
6	DEFENDANT'S DEPOSITION EXHIBITS: * PAGE	4 going on the record at 9:36 a.m. on
7	154 Navy Communications with Attorneys 17	5 September 28th, 2023.
8	155 e-mails Re: Award of M&A contract, Bates	6 Please note that the microphones are
9	NAVY-ADS-219026 to 173 27	7 sensitive and may pick up whispering, private
10	156 Amendment of Solicitation/Modification of	8 conversations. Please mute your phones at this
11	Contract, No. 2, Bates NAVY-ADS-12880	9 time.
12	to 925 32	10 Audio and video recording will continue
13	157 e-mails Re: Navy Advertising Contract	11 to take place unless all parties agree to go off
14	N00189-15-D-Z024, Bates NAVY-ADS-315296	12 the record.
15	to 374 40	13 This is Media Unit 1 of the
16	158 e-mail from Uhlan to Owens, 7/15/22,	14 video-recorded deposition of Mr. Allen Owens in
17	Bates NAVY-ADS-72243 61	15 the matter of United States, et al., versus
18	159 Digital Media Bill, Oct-22, Bates	16 Google, LLC, filed in the United States District
19	NAVY-ADS-374151 to 171 67	17 Court, Eastern District of Virginia, Alexandria
20	160 Digital Media Bill, Nov-22, Bates	18 Division, Case Number 1:23-cv-00108-LMB-JFA.
21	NAVY-ADS-373978 to 4145 77	19 My name is Orson Braithwaite
22	161 Digital Media FY19 Q3 Refund, Bates	20 representing Veritext Legal Solutions and I'm the
	NAVY-ADS-5844 82	21 videographer. The court reporter is Shari
	162 e-mails Re: Navy Refund Checks, Bates	22 Broussard from the firm Veritext Legal Solutions.
	NAVY-ADS-5834 to 837 83	
	163 Plaintiff United States of America's	
	Responses to Defendant Google LLC's	
	Second Set of Interrogatories to the	
	United States 99	

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<p>1 Q -- correct?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 VIDEO TECHNICIAN: Counsel, can you</p> <p>4 repeat that.</p> <p>5 MR. PRITCHETT: Objection. Form.</p> <p>6 THE WITNESS: The COR -- as stated</p> <p>7 earlier, the COR is unable to change the task</p> <p>8 orders or the contract. Only the contracting</p> <p>9 officer can do that.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q Right. I'm asking about the COR's</p> <p>12 authority to direct VMLY&R's performance. Is the</p> <p>13 COR permitted to direct VMLY&R's performance in</p> <p>14 any specific manner?</p> <p>15 MR. PRITCHETT: Objection. Form.</p> <p>16 THE WITNESS: The COR is not able to</p> <p>17 tell the contractor exactly how to do the job.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q If you go back to Exhibit 155, turning</p> <p>20 to page one 1- -- 219053. Under just above the</p> <p>21 little b where it says "Contract Surveillance,"</p> <p>22 I'm looking at number (2).</p>	<p>1 contractor's performance to see that inefficient</p> <p>2 or wasteful methods are not being used"?</p> <p>3 A That is a correct reading as well.</p> <p>4 Q You can set that aside.</p> <p>5 (Defendant's Exhibit Number 157 was</p> <p>6 marked for identification.)</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q And I'm handing you now Exhibit 157,</p> <p>9 NAVY-ADS-315296. And I want to -- I want you to</p> <p>10 confirm that this is the 2015 contract between</p> <p>11 VMLY&R and the Navy, correct?</p> <p>12 MR. PRITCHETT: Objection. Form.</p> <p>13 THE WITNESS: One moment to quickly</p> <p>14 review.</p> <p>15 So unlike the previous document, it</p> <p>16 looks like this one only has the -- the first file</p> <p>17 and then it has a listing of the attachments,</p> <p>18 whereas this one is more complete because it had</p> <p>19 also the printed attachments from the contract.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Okay. So is what is -- what I've marked</p> <p>22 as Exhibit 157 the 2015 contract between VMLY&R</p>
Page 39	Page 41
<p>1 Do you see where I am?</p> <p>2 A The second paragraph from the top?</p> <p>3 Q Yes.</p> <p>4 A Yes.</p> <p>5 Q Okay. And am I reading correctly the</p> <p>6 sentence which says, "The COR shall not instruct</p> <p>7 the contractor how to perform"?</p> <p>8 A Yes, you are reading that correctly.</p> <p>9 Q Okay. And then if you look under b.(1)</p> <p>10 under "Contract Surveillance," am I reading</p> <p>11 correctly the sentences which say, "The COR must</p> <p>12 be able to distinguish between surveillance (which</p> <p>13 is proper and necessary) and supervision (which is</p> <p>14 not permitted). Surveillance becomes supervision</p> <p>15 when you go beyond enforcing the terms of the</p> <p>16 contract. If the contractor is directed to</p> <p>17 perform the contract services in a specific</p> <p>18 manner, the line is being crossed"?</p> <p>19 A That is an accurate reading.</p> <p>20 Q Okay. And in number (2) under b.(2) --</p> <p>21 under b., did I read it -- am I reading it</p> <p>22 correctly when I say, "The COR shall monitor the</p>	<p>1 and the Navy?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 THE WITNESS: With the exception of the</p> <p>4 attachments, which are notated on page 77 and 78</p> <p>5 but not printed out.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay.</p> <p>8 A Unless I'm missing it. I don't think</p> <p>9 so.</p> <p>10 Q Is it a common practice that the Navy</p> <p>11 sometimes include the attachments in the contracts</p> <p>12 and sometimes not?</p> <p>13 MR. PRITCHETT: Objection. Form.</p> <p>14 THE WITNESS: No, I -- I would say it's</p> <p>15 probably more that the -- that the second file</p> <p>16 maybe just wasn't attached, I don't -- I -- I</p> <p>17 don't know, but -- but there should be a listing</p> <p>18 of those.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q And so they're not combined into a</p> <p>21 single file often, is that the case, as we saw in</p> <p>22 Exhibit 155, where there are two attachments to</p>

<p style="text-align: right;">Page 42</p> <p>1 the cover e-mail?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 THE WITNESS: Yeah, I -- I can't speak</p> <p>4 to why Ms. LaCroce on the November 1st of 2018 may</p> <p>5 not have attached the second file.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. But at least for purposes of your</p> <p>8 review here today, you can confirm that what is in</p> <p>9 front of you as Exhibit 157 is the contract -- the</p> <p>10 2015 contract without the attachments, correct?</p> <p>11 A That is correct.</p> <p>12 Q Okay. You can set that to the side.</p> <p>13 And so then task orders are issued</p> <p>14 pursuant to the contracts that we just looked at,</p> <p>15 correct?</p> <p>16 A Correct, task orders are issued</p> <p>17 afterwards.</p> <p>18 Q Okay. What is the cadence or frequency</p> <p>19 with which task orders are issued under these</p> <p>20 contracts?</p> <p>21 MR. PRITCHETT: Objection. Form.</p> <p>22 THE WITNESS: Yeah. So -- so task</p>	<p style="text-align: right;">Page 44</p> <p>1 issued at once, and so each year is different. It</p> <p>2 can come quarterly, in some cases it could come</p> <p>3 once every other month, and then in some cases you</p> <p>4 could get a four- or five-month shot at a time.</p> <p>5 It really just depends on the availability of</p> <p>6 funds at higher echelons of command and how they</p> <p>7 see fit to issue their funds down.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q Okay. I'm handing you what I've marked</p> <p>10 as Exhibit 55. This is a document that we looked</p> <p>11 at in your prior deposition, NAVY-ADS-241136, and</p> <p>12 this is an example of a task order issued pursuant</p> <p>13 to the 2021 contract, correct?</p> <p>14 A Yes, that would be correct.</p> <p>15 Q Okay. And if you look at page 241142</p> <p>16 under "3. Scope" -- do you see where I am?</p> <p>17 A You said 2211?</p> <p>18 Q 241142.</p> <p>19 A Yes.</p> <p>20 Q We're reading in the Performance Work</p> <p>21 Statement.</p> <p>22 What's the Performance Work Statement</p>
<p style="text-align: right;">Page 43</p> <p>1 orders are issued as funds are made available.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q And how are funds made available?</p> <p>4 A From Congress to the Navy, from the Navy</p> <p>5 to the various echelons of command. Then once the</p> <p>6 comptroller at Navy Recruiting Command gets the --</p> <p>7 the marketing and advertising funding, then he</p> <p>8 issues it to us -- to Navy Recruiting Command, who</p> <p>9 will then go through the process of getting it</p> <p>10 approved onto the task order and getting the task</p> <p>11 order issued.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And what is -- with what frequency are</p> <p>14 funds made available in -- in order for you to</p> <p>15 issue task orders?</p> <p>16 A Sure.</p> <p>17 MR. PRITCHETT: Objection. Form.</p> <p>18 THE WITNESS: In a perfect scenario the</p> <p>19 funds would be issued at the beginning of the</p> <p>20 fiscal year, but in situations such as continuing</p> <p>21 resolutions and whatnot, they can be delayed. And</p> <p>22 even after they are issued, they are not always</p>	<p style="text-align: right;">Page 45</p> <p>1 represent?</p> <p>2 A The Performance Work Statement</p> <p>3 represents the Government's intent -- a statement</p> <p>4 of the services they're required.</p> <p>5 Q And it reflects what the contractor, in</p> <p>6 this case VMLY&R, shall do under this task order,</p> <p>7 correct?</p> <p>8 A It does. It -- it lays out the -- the</p> <p>9 objective, the scope, the resources available and</p> <p>10 the timing.</p> <p>11 Q Okay. And under "3. Scope" the second</p> <p>12 bullet, can you read the first sentence -- the</p> <p>13 first -- the first -- the first sentence of the</p> <p>14 second bullet?</p> <p>15 A Sure. Under "Scope"?</p> <p>16 Q Yeah.</p> <p>17 A "Young & Rubicam (VMLY&R) shall</p> <p>18 research, negotiate, and purchase digital media</p> <p>19 and Internet advertising for flighting from</p> <p>20 Jan/Feb of 2022 through 30 June of 2022 in the</p> <p>21 form of:"</p> <p>22 Q Okay. And that -- that describes a</p>

12 (Pages 42 - 45)

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<p>1 service that VMLY&R shall do under this task 2 order, correct?</p> <p>3 MR. PRITCHETT: Objection. Form.</p> <p>4 THE WITNESS: Correct. This lays out 5 the -- the purchasing that is being requested.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. And this task order does not set 8 a price for the advertising that Young & Rubicam 9 shall research, negotiate, and purchase, correct?</p> <p>10 MR. PRITCHETT: Objection. Form, 11 foundation.</p> <p>12 THE WITNESS: That is correct.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q It simply sets a ceiling that they 15 cannot exceed; is that correct?</p> <p>16 MR. PRITCHETT: Objection. Form, 17 foundation.</p> <p>18 THE WITNESS: It does set the ceiling 19 they cannot exceed and it does list the 20 approximate number of impressions expected to get 21 for that.</p> <p>22 BY MS. GOODMAN:</p>	<p>1 estimates in scope, number three here, correct?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q And the Navy does not tell VMLY&R how to 6 purchase ads, correct?</p> <p>7 MR. PRITCHETT: Objection. Form, 8 foundation.</p> <p>9 THE WITNESS: The Navy does not tell the 10 contractor how to perform the job. As stated 11 earlier, that -- that would be improper.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And, therefore, you do not tell the 14 contractor how to purchase the advertising 15 requested that they go purchase in scope three?</p> <p>16 MR. PRITCHETT: Objection. Form, 17 foundation.</p> <p>18 THE WITNESS: In scope three we lay out 19 the items that we are looking to purchase and then 20 based on a follow-on recommended plan is where we 21 lay out the specifics of what we're looking to 22 purchase. However, as you stated, we then do not</p>
Page 47	Page 49
<p>1 Q And that's an estimate, correct?</p> <p>2 A Due to the nature of the -- the -- the 3 market price changes, then yes, that's an -- that 4 is an estimate.</p> <p>5 Q Okay. And the task order does not set a 6 quantity of advertising to buy, correct?</p> <p>7 MR. PRITCHETT: Objection. Form.</p> <p>8 THE WITNESS: It does provide estimated 9 quantities of what's expected.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q Of the impressions; is that what you're 12 referencing?</p> <p>13 A For -- for the top two major bullets of 14 digital display and online video as well as for 15 paid search, yes -- or, excuse me, paid social, 16 yes. And then for the remaining items it lists 17 out the approximate number of leads expected to be 18 garnered for the investment.</p> <p>19 Q Okay. And those are --</p> <p>20 A Again, those are estimates.</p> <p>21 Q That's my next question.</p> <p>22 So you're looking at all of the</p>	<p>1 tell them how to go and purchase them.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q Okay. Does the Navy tell the contractor 4 what vendors to purchase advertising from?</p> <p>5 MR. PRITCHETT: Objection. Form, 6 foundation.</p> <p>7 THE WITNESS: In the form of an approved 8 reco deck or an approved recommended plan, the 9 Navy does. The Navy asks for a recommended plan 10 and relies on the experience and expertise of the 11 ad agency to provide a recommended plan, but they 12 do not purchase it until the Navy has approved the 13 plan.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q And under the contract and task orders 16 for the contracts that we've been talking here -- 17 about here today between the Navy and VMLY&R, 18 VMLY&R uses a subcontractor to purchase ads, 19 correct?</p> <p>20 MR. PRITCHETT: Objection. Form, 21 foundation.</p> <p>22 THE WITNESS: Based on my discussions</p>

<p style="text-align: right;">Page 50</p> <p>1 with the FLC contracting officer, the term 2 "affiliate" was used to describe WaveMaker, the 3 one who purchases the ads for Navy. 4 BY MS. GOODMAN: 5 Q I see. So rather than describing 6 WaveMaker as a subcontractor, is it the Navy's 7 position that the more appropriate way to describe 8 them is affiliate? 9 MR. PRITCHETT: Objection. Form. 10 THE WITNESS: Again, based on my 11 conversations with FLC, yes. 12 BY MS. GOODMAN: 13 Q And what is FLC? 14 A The Fleet Logistics Center, the one who 15 does contracts for the Navy. 16 Q Okay. And there's no contract between 17 Navy and WaveMaker, correct? 18 MR. PRITCHETT: Objection. Form, 19 foundation. 20 THE WITNESS: The -- the marketing and 21 -- the only marketing and advertising contract 22 Navy has is with VMLY&R.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Do you know -- does the Navy know how 2 WaveMaker makes purchases of ads for the Navy 3 under the contracts we've been discussing? 4 MR. PRITCHETT: Objection. Form. 5 THE WITNESS: So the Navy tells them 6 which ads or which -- approves a plan which lays 7 out which vendors to buy from, but we do not tell 8 them what methods to employ to purchase those, we 9 rely on their expertise. 10 BY MS. GOODMAN: 11 Q And so does the Navy know how WaveMaker 12 goes about actually purchasing the media for the 13 Navy under the contracts we've been discussing? 14 MR. PRITCHETT: Objection. Form. 15 THE WITNESS: To an extent as what -- 16 what would be provided in the reco deck, but as 17 far as the detailed execution of how those ads are 18 placed, again, the Navy relies on the expertise of 19 VMLY&R to do that. 20 BY MS. GOODMAN: 21 Q Okay. So the best understand- -- the 22 best representation of the Navy's understanding of</p>
<p style="text-align: right;">Page 51</p> <p>1 BY MS. GOODMAN: 2 Q And thus there's not one between the 3 Navy and WaveMaker, correct? 4 MR. PRITCHETT: Same objections. 5 THE WITNESS: The contract is between 6 VMLY&R and Navy and it's my understanding that 7 WaveMaker is an affiliate of VMLY&R and -- and 8 does that purchasing on their -- on -- on behalf 9 of them. 10 BY MS. GOODMAN: 11 Q On behalf of VMLY&R? 12 A Right. 13 MR. PRITCHETT: Objection. Form. 14 BY MS. GOODMAN: 15 Q And there's no contract between Google 16 and the Navy for purposes of marketing and 17 advertising, correct? 18 MR. PRITCHETT: Objection. Form, 19 foundation. 20 THE WITNESS: Correct, our contract is 21 with VMLY&R. 22 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 53</p> <p>1 how ads are actually purchased is found in the 2 tactical recommendation decks; am I understanding 3 your testimony correctly? 4 MR. PRITCHETT: Objection. Form. 5 THE WITNESS: My testimony is that the 6 Navy's understanding of which vendors to utilize 7 would be laid out in that approved deck, but 8 the -- the method employed to go out and procure 9 the ad would -- would be something that VMLY&R 10 would -- would do themselves. We wouldn't tell 11 them how to do it. 12 BY MS. GOODMAN: 13 Q And is something that is not known to 14 the Navy, correct? 15 MR. PRITCHETT: Objection. Form. 16 THE WITNESS: To an extent. There would 17 be an exception such as our programmatic buying 18 with The Trade Desk. 19 BY MS. GOODMAN: 20 Q What is -- what do you mean by that? 21 A So you're -- you're asking which methods 22 are used to employ -- or which methods are</p>

<p style="text-align: right;">Page 66</p> <p>1 Q And you said you reviewed invoices to 2 prepare for your deposition, correct? 3 A That is correct. 4 Q Okay. And please describe for me the 5 process by which the Navy has issued invoices? 6 MR. PRITCHETT: Objection. Form. 7 THE WITNESS: So VMLY&R is issued the 8 task order to purchase media. When a media buy is 9 to occur, the agency does an invoicing -- what we 10 call the upfront invoicing or an initial 11 invoicing, which -- which specifies a specific 12 amount. We'll call it X. They invest -- they 13 invoice us for that spend. And then once the buy 14 has been completed and all of the dollars have 15 been executed, they subsequently send us another 16 invoice which will -- if the dollars were exact, 17 they don't send us another invoice. If the -- if 18 there is any credit due because let's say that the 19 amount of spend, since it was not to exceed, the 20 amount of spend comes under, they will send us a 21 separate invoice that has a credit issued on there 22 and the invoice is uploaded -- in both of those</p>	<p style="text-align: right;">Page 68</p> <p>1 before, just using a different term, pre-bill, 2 instead of upfront, but it is the amount that's 3 billed. Since the exact amount is market 4 dependent on pricing, it won't be known until 5 afterwards. So they have the not to exceed, but 6 there will almost inevitably be cleanup that has 7 to happen after the fact to account for any funds 8 that weren't spent and those credits can be issued 9 back. 10 Q And if you look at the page ending in 11 158 -- 12 A Yes. 13 Q -- this is the Plan Summary -- the 14 approved Tactical Media Recommendation Plan 15 against which this upfront invoice is issued, 16 correct? 17 MR. PRITCHETT: Objection. Form, 18 foundation. 19 THE WITNESS: It looks to be, yes. 20 BY MS. GOODMAN: 21 Q And for October of 2022, as reflected on 22 158, this Plan Summary shows 1 million 111 --</p>
<p style="text-align: right;">Page 67</p> <p>1 instances, the invoice is uploaded into WAWF, Wide 2 Area Workflow, per the terms of the contract. At 3 which point the Navy goes in, pulls down the 4 invoice, verifies all the information on it, 5 verifies what was purchased, that it was in line 6 with the plan, certifies the invoice for payment 7 and then payment is issued. 8 (Defendant's Exhibit Number 159 was 9 marked for identification.) 10 BY MS. GOODMAN: 11 Q I'm handing you Exhibit 159, 12 NAVY-ADS-374151. And my question to you, sir, is 13 whether this is an invoice that describes -- that 14 reflects the upfront payment -- or upfront 15 invoicing that you just described? 16 A Yes. 17 Q And if you look at page ending 374155, 18 in the middle it says, "This invoice is a 19 breakdown of the INTERACTIVE pre-bill in 20 accordance with the approval to execute plan." 21 What does that mean? 22 A That means exactly what I described</p>	<p style="text-align: right;">Page 69</p> <p>1 \$112,500 for The Trade Desk, correct? 2 A No, it -- it shows a net cost of -- hold 3 on. I'm sorry. For October through January it 4 shows a net cost of 4.45 million. 5 Q Okay. And in -- on the October column 6 it has roughly one quarter of that, right? 7 1.1 million approximately? 8 A For the October portion that's what it 9 shows. 10 Q Okay. Now, go back to page 154. 11 A Uh-huh. 12 Q The amount pre-billed for Trade Desk on 13 October 1, 2022 is \$1,329,471.56, correct? 14 MR. PRITCHETT: Objection. Form. 15 THE WITNESS: On this task order for the 16 October through January Navy display, you are 17 correct that the pre-bill that is sent in this 18 month reflects 1,329,471.56. 19 BY MS. GOODMAN: 20 Q Can you explain the discrepancy between 21 what is approved on the Plan Summary of 22 approximately 1.1 million and Y&R billing for</p>

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<p>1 1.3 million in the month of October?</p> <p>2 MR. PRITCHETT: Objection. Form,</p> <p>3 foundation.</p> <p>4 THE WITNESS: Yeah, the -- the Plan</p> <p>5 Summary has a net cost of 4.45 shown for The Trade</p> <p>6 Desk and although the estimates here show an exact</p> <p>7 split between October, November, December and</p> <p>8 January of 1,112,500, that would not -- the -- the</p> <p>9 task order itself is for the total amount and so</p> <p>10 that would be their not to exceed amount.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q And --</p> <p>13 A So it -- I'm sorry.</p> <p>14 Q You go ahead. I interrupted you.</p> <p>15 A Well, I was just going to say so if this</p> <p>16 one is slightly higher, as it indicates, by about</p> <p>17 200,000, the expectation is one of the other three</p> <p>18 months would have to be 200,000 less because they</p> <p>19 would not be able to run that for all four months</p> <p>20 and, again, so long as they don't pass the</p> <p>21 not-to-exceed amount. That's the -- that's the</p> <p>22 concern.</p>	<p>1 the agency is not to incur costs that exceed any</p> <p>2 amount given on a funded task order.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Okay. And you're referencing the task</p> <p>5 order, but what we're looking at in this invoice</p> <p>6 is an excerpt of the Plan Summary, correct?</p> <p>7 MR. PRITCHETT: Objection. Form.</p> <p>8 THE WITNESS: Correct.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q And the task order does not break out</p> <p>11 dollars to be spent or to be allocated to each</p> <p>12 individual recommended partner, correct?</p> <p>13 MR. PRITCHETT: Objection. Form.</p> <p>14 THE WITNESS: I don't have the specific</p> <p>15 task order in front of me to see if it -- if it</p> <p>16 lays that out.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Have you ever seen a task order that</p> <p>19 lays out specifically a budgeted amount for a</p> <p>20 specific recommended partner such as The Trade</p> <p>21 Desk, Peacock, Kargo, as listed in this invoice</p> <p>22 we're looking at?</p>
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<p>1 Q Okay. And the ad agency here, Y&R,</p> <p>2 determines how much to invoice upfront for; is</p> <p>3 that accurate?</p> <p>4 MR. PRITCHETT: Objection. Form,</p> <p>5 foundation.</p> <p>6 THE WITNESS: It would be accurate to</p> <p>7 say that the ad agency in determining how to</p> <p>8 execute the plan did execute the -- the 1.329.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q So within that plan, that not-to-exceed</p> <p>11 amount of 4.45 million net cost for The Trade</p> <p>12 Desk, the ad agency, Y&R, has discretion on how to</p> <p>13 invoice or when to invoice or how to spend that</p> <p>14 money across those four months so long as they do</p> <p>15 not exceed the 4.45 million?</p> <p>16 MR. PRITCHETT: Objection. Form,</p> <p>17 foundation.</p> <p>18 THE WITNESS: That is correct. They</p> <p>19 should -- they should stay -- they have to stay</p> <p>20 within that net cost that's listed on the</p> <p>21 contract -- or, excuse me, that's listed on the</p> <p>22 task order and the contract specifies that -- that</p>	<p>1 MR. PRITCHETT: Objection. Form</p> <p>2 foundation.</p> <p>3 THE WITNESS: No, I've never seen a task</p> <p>4 order that specified that.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q And the upfront invoice, when they are</p> <p>7 issued, are they paid by the Navy before proof of</p> <p>8 ads being -- have been run?</p> <p>9 MR. PRITCHETT: Objection. Form,</p> <p>10 foundation.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q Let me -- let me rephrase the question.</p> <p>13 When the Navy is issued an upfront</p> <p>14 invoice or a pre-bill, as we looked at, does the</p> <p>15 Navy pay that invoice, i.e. remit payment to Y&R,</p> <p>16 before it has proof that any ads were purchased?</p> <p>17 MR. PRITCHETT: Objection. Form,</p> <p>18 foundation.</p> <p>19 THE WITNESS: So the contract with</p> <p>20 VMLY&R states that the Navy will reimburse the</p> <p>21 agency for costs incurred in the placement and</p> <p>22 purchase of media, so the -- the agency is unable</p>

<p style="text-align: right;">Page 74</p> <p>1 to bill us until they've incurred the cost.</p> <p>2 I don't have the level of detail to know</p> <p>3 exactly when they make payment to the vendor,</p> <p>4 whether it's on day one or -- or after that.</p> <p>5 But -- but they submit us -- they submit to us an</p> <p>6 invoice for the -- the pre-bill I think was the</p> <p>7 term we used here -- for the pre-bill and it's</p> <p>8 only upon the second invoicing is when they have</p> <p>9 to provide the various proofs to substantiate the</p> <p>10 final amount that is being billed to us.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q Does the Navy pay the pre-bill before</p> <p>13 receiving that second invoice?</p> <p>14 MR. PRITCHETT: Objection. Form.</p> <p>15 THE WITNESS: Yes, the Navy pays the</p> <p>16 pre-bill to enable the media to be purchased.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Okay. So the Navy pays the pre-bill</p> <p>19 before media is, in fact, purchased?</p> <p>20 MR. PRITCHETT: Objection. Form,</p> <p>21 foundation.</p> <p>22 THE WITNESS: Again, as I stated</p>	<p style="text-align: right;">Page 76</p> <p>1 THE WITNESS: Yeah, the Navy is not</p> <p>2 privy to the detailed information of exactly when</p> <p>3 any of their vendors, whether it be The Trade Desk</p> <p>4 or others, are paid.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Okay. And the Navy is not privy to who</p> <p>7 remits payment to vendors, meaning WaveMaker or</p> <p>8 Y&R, correct?</p> <p>9 MR. PRITCHETT: Objection. Form,</p> <p>10 foundation.</p> <p>11 THE WITNESS: The Navy's contract is</p> <p>12 with VMLY&R. WaveMaker is one of their</p> <p>13 affiliates. The billing comes from VMLY&R and</p> <p>14 that's who payment is remitted to. But past</p> <p>15 that -- we are not privy to the level of their</p> <p>16 financial systems of how payment is executed past</p> <p>17 that.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q So all the Navy knows is that it pays</p> <p>20 VMLY&R for media purchased on Navy's behalf,</p> <p>21 correct?</p> <p>22 MR. PRITCHETT: Objection. Form,</p>
<p style="text-align: right;">Page 75</p> <p>1 earlier, the Navy -- the Navy pays the pre-bill to</p> <p>2 support costs incurred, but I -- just as I stated</p> <p>3 earlier, we don't tell them how to execute, I'm</p> <p>4 not privy to at what date they would actually</p> <p>5 execute the -- the media buy.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q I see.</p> <p>8 A But as they send us the pre-bill, that's</p> <p>9 when we approve it and -- for payment. And then</p> <p>10 when they send us the second billing is whenever</p> <p>11 we go to the penny to balance what was actually,</p> <p>12 after any credits, what was actually spent and the</p> <p>13 substantiating invoices from all the vendors.</p> <p>14 And, again, we -- we match that up to the penny.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q And the Navy is not aware of how --</p> <p>17 strike that.</p> <p>18 The Navy is not aware of when vendors</p> <p>19 such as The Trade Desk are paid by its ad agency,</p> <p>20 correct?</p> <p>21 MR. PRITCHETT: Objection. Form,</p> <p>22 foundation.</p>	<p style="text-align: right;">Page 77</p> <p>1 foundation.</p> <p>2 THE WITNESS: It would be -- it would be</p> <p>3 more complete to say the Navy knows all of the</p> <p>4 media that's been purchased on its behalf and pays</p> <p>5 VMLY&R to reimburse them the cost incurred in the</p> <p>6 placement of media, yes.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q And are there occasions when VMLY&R does</p> <p>9 not pass on all of the costs incurred by it to the</p> <p>10 Navy?</p> <p>11 MR. PRITCHETT: Objection. Form,</p> <p>12 foundation.</p> <p>13 THE WITNESS: The contract calls for</p> <p>14 VMLY&R to -- to be reimbursed for those costs</p> <p>15 incurred. To the best of my knowledge, I don't</p> <p>16 believe they have incurred any costs that they</p> <p>17 didn't bill us for.</p> <p>18 (Defendant's Exhibit Number 160 was</p> <p>19 marked for identification.)</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Okay. I'm handing you Exhibit 160,</p> <p>22 NAVY-ADS-373978. This is a lengthy invoice and I</p>

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<p>1 just want to direct you to the Billing Memo on the 2 second page of it.</p> <p>3 My first question is what is a Billing 4 Memo?</p> <p>5 A A Billing Memo could be used to explain 6 any type of -- any type of discrepancy or 7 something otherwise that might be noted in here 8 and to explain what that is for.</p> <p>9 Q Okay. And this Billing Memo shows that 10 VMLY&R is not charging the Navy for, in the second 11 bullet, an 8-cent fee and in the fourth bullet a 12 4-cent fee, correct?</p> <p>13 A Let's see.</p> <p>14 MR. PRITCHETT: Objection. Form.</p> <p>15 THE WITNESS: As I testified earlier, we 16 balance this down to the penny and when -- when 17 the Navy finds any discrepancies and notifies 18 VMLY&R, they have in the past issued a memo to -- 19 such as this -- to explain that any amount under a 20 certain amount of money, and I -- I can't remember 21 if it's like \$1 or 50 cents or whatever, they 22 don't -- they don't try to collect on due to it</p>	<p>1 the 4 in this -- in this occasion was paid to 2 Amazon in bullets two and four.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Okay. And do you have -- now that this 5 document has refreshed your recollection, do you 6 recall any other instances where VMLY&R has not 7 passed on certain charges to the Navy that it --</p> <p>8 MR. PRITCHETT: Objection. I'm sorry.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q -- incurred in the purchase of media for 11 the Navy?</p> <p>12 MR. PRITCHETT: Objection. Form, 13 foundation.</p> <p>14 THE WITNESS: Aside from this where 15 we're talking small amounts, in the -- in the -- 16 in the pennies, I am unaware of any time where 17 the -- VMLY&R, you know, would not attempt to bill 18 us for costs incurred.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q And any price negotiations that take 21 place for the purchase of media, does the Navy 22 participate in those?</p>
Page 79	Page 81
<p>1 being more -- more cost in manpower to chase that 2 down and do the work than rather collect on it. I 3 don't remember the exact dollar amount, but this 4 refreshes my memory on that.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Okay. And does the Navy know whether 7 even though VMLY&R has not charged the Navy for 8 these fees -- strike that.</p> <p>9 Although VMLY&R has not charged the Navy 10 for these fees, does the Navy know whether VMLY&R, 11 in fact, pays the fees to the vendors, here 12 Amazon?</p> <p>13 MR. PRITCHETT: Objection. Form, 14 foundation.</p> <p>15 THE WITNESS: So the -- the contract 16 with VMLY&R calls for them to only bill us for 17 costs incurred, which would include those fees, 18 and once we pay those to VMLY&R, it would be our 19 understanding that -- that they would pay those 20 vendors.</p> <p>21 In this particular instance, I can't 22 confirm whether the 8 cents was paid to Amazon or</p>	<p>1 MR. PRITCHETT: Objection. Form, 2 foundation.</p> <p>3 THE WITNESS: The Navy contracts with 4 VMLY&R to negotiate placement of media on our 5 behalf with the exception of one minor instance 6 I -- I can -- I can remember where the Navy was -- 7 even in that instance we weren't directly involved 8 with the vendor. But there was a vendor who was 9 trying to double the -- the price, but it 10 wasn't -- it was an online tool, but it wasn't the 11 purchase of media. But, no, as a -- as a general 12 rule, the Navy does not get involved in that 13 negotiation.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q And so long as your ad agency stays 16 within the not-to-exceed amount for the purchasing 17 of advertising, it has discretion to negotiate 18 pricing, correct?</p> <p>19 MR. PRITCHETT: Objection. Form, 20 foundation.</p> <p>21 THE WITNESS: Yeah, the contract calls 22 for them to propose, recommend and negotiate</p>

<p>1 pricing on our behalf.</p> <p>2 (Defendant's Exhibit Number 161 was</p> <p>3 marked for identification.)</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q I'm handing you Exhibit 161,</p> <p>6 NAVY-ADS-5844, and this is a Digital Media Refund</p> <p>7 document.</p> <p>8 In what instances does Y&R refund Navy</p> <p>9 for the purchase of digital media?</p> <p>10 MR. PRITCHETT: Objection. Form,</p> <p>11 foundation.</p> <p>12 THE WITNESS: Let me read this document</p> <p>13 real quick.</p> <p>14 Is your question pertaining to this</p> <p>15 instance or just in general?</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q First -- first, let's keep it to this</p> <p>18 instance.</p> <p>19 For what purpose was the Navy issued a</p> <p>20 refund, as reflected in this Exhibit 161?</p> <p>21 MR. PRITCHETT: Objection. Form.</p> <p>22 THE WITNESS: Yeah, so without the</p>	<p>Page 82</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q Okay. I'm handing you Exhibit 162,</p> <p>3 which is an e-mail from VMLY&R to Cheryl</p> <p>4 Aimes-Tillman, NAVY-ADS-5834 to 5837.</p> <p>5 And Cheryl Aimes-Tillman, she's at the</p> <p>6 Navy, what's her role?</p> <p>7 A She is a warranted contracting officer</p> <p>8 who works for Ms. Dean Stewart-Curry.</p> <p>9 Q And this set of refunds attached to this</p> <p>10 e-mail for the amounts of \$2,500 approximately and</p> <p>11 \$212,000 approximately, what would you need to do</p> <p>12 to figure out precisely what purchases are being</p> <p>13 refunded here?</p> <p>14 MR. PRITCHETT: Objection. Form.</p> <p>15 THE WITNESS: Let me review this real</p> <p>16 quick.</p> <p>17 So I would need to -- I would need to</p> <p>18 look at the same documents as referenced earlier.</p> <p>19 And because this references the Army-Navy game</p> <p>20 2019 and has the -- for the 212,000 amount, again,</p> <p>21 I would have to -- I wouldn't want to say with</p> <p>22 certainty, but I'm -- I'm supposing that that</p>
<p>1 supporting documentation of the work statement and</p> <p>2 the reco deck and the -- all the -- the other</p> <p>3 substantiated documentation, it would be</p> <p>4 impossible for me to determine exactly what this</p> <p>5 was on itself -- why this -- why this refund</p> <p>6 occurred, but I can talk in general why a refund</p> <p>7 would occur.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q Okay. What documentation would you look</p> <p>10 at -- would you need to look at in order to figure</p> <p>11 out precisely what has been refunded -- what</p> <p>12 purchases have been refunded?</p> <p>13 A Sure.</p> <p>14 MR. PRITCHETT: Objection. Form.</p> <p>15 THE WITNESS: I would need to look at</p> <p>16 the task order, the reco, the detailed invoice,</p> <p>17 and then any -- any additional e-mails that</p> <p>18 might -- that might be attached to that. But --</p> <p>19 but from those I could get an idea of what that</p> <p>20 refund was -- was due for.</p> <p>21 (Defendant's Exhibit Number 162 was</p> <p>22 marked for identification.)</p>	<p>Page 83</p> <p>1 might have something to do with COVID and the</p> <p>2 implications on the game. That's probably the</p> <p>3 year that they didn't let anyone outside of Navy</p> <p>4 and Army actually attend the game and, therefore,</p> <p>5 we didn't have all the advertising that we would</p> <p>6 normally have. But, again, that's just my</p> <p>7 assumption without looking at documents. I would</p> <p>8 have to go look at those documents that you asked</p> <p>9 for earlier -- or that I mentioned to you earlier.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q And so is it accurate to say that simply</p> <p>12 looking at invoice amounts to the Navy is not</p> <p>13 necessarily the full -- or the most accurate</p> <p>14 representation of how much money the Navy actually</p> <p>15 paid to VMLY&R?</p> <p>16 MR. PRITCHETT: Objection. Form.</p> <p>17 THE WITNESS: No, the -- the invoicing</p> <p>18 remains that they submit a -- and it's mentioned</p> <p>19 in the e-mail here from Cheryl actually, that "a</p> <p>20 task order is closed out when all deliverables</p> <p>21 have been received and accepted." So the agency</p> <p>22 is supposed to submit a final task order ending</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 106</p> <p>1 through Google's Ad Exchange? 2 A No, we do not. 3 MR. PRITCHETT: Okay. No further 4 questions. 5 MS. GOODMAN: Okay. 6 VIDEO TECHNICIAN: The time is 7 12:08 p.m. We're off the record. 8 (Whereupon, at 12:08 p.m., the 9 deposition of ALLEN OWENS, JR. 10 was concluded.) 11 * * * * *</p> <p>12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 108</p> <p>1 A C K N O W L E D G E M E N T 2 O F D E P O N E N T 3 4 5 I, ALLEN OWENS, JR., do hereby acknowledge 6 I have read and examined the foregoing pages of 7 testimony, and the same is a true, correct and 8 complete transcription of the testimony given by 9 me, and any changes or corrections, if any, appear 10 in the attached errata sheet signed by me. 11 12 13 14 15 16 17 18 19 20 Date ALLEN OWENS, JR. 21 22 Job No. CS6118347</p>
<p style="text-align: right;">Page 107</p> <p>1 CERTIFICATE OF NOTARY PUBLIC 2 I, SHARI R. BROUSSARD, the officer before 3 whom the foregoing deposition was taken, do hereby 4 certify that the witness whose testimony appears 5 in the foregoing deposition was duly sworn by me; 6 that the testimony of said witness was taken by me 7 in stenotype and thereafter reduced to typewriting 8 under my direction; that said deposition is a true 9 record of the testimony given by said witness; 10 that I am neither counsel for, related to, nor 11 employed by any of the parties to the action in 12 which this deposition was taken; and, further, 13 that I am not a relative or employee of any 14 counsel or attorney employed by the parties 15 hereto, nor financially or otherwise interested in 16 the outcome of this action.</p> <p>17 18  19 SHARI R. BROUSSARD Notary Public in and for the 20 District of Columbia 21 22 My commission expires: 23 August 14, 2025</p>	<p style="text-align: right;">Page 109</p> <p>1 Katherine Clemons Esq. 2 katherine.clemons@usdoj.gov 3 October 2, 2023 4 RE: United States, Et Al v. Google, LLC 5 9/28/2023, Allen Owens, Jr., Navy 30(B)(6) (#6118347) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 erratas-cs@veritext.com 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25</p>

28 (Pages 106 - 109)

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